

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD  
WESTERN REGION  
STATE OF WASHINGTON

FRIENDS OF THE SAN JUANS, P.J.  
TAGGARES COMPANY, COMMON SENSE  
ALLIANCE, WILLIAM H. WRIGHT, AND  
SAN JUAN BUILDERS ASSOCIATION,

Petitioners,

v.

SAN JUAN COUNTY,

Respondent.

**CASE No. 13-2-0012c**

**ORDER FINDING COMPLIANCE**

THIS Matter came before the Board for hearing on April 7, 2015, following submittal of San Juan County's Compliance Report, related to the Growth Management Act requirements to protect the functions and values of wetland ecosystems.<sup>1</sup> Board members Raymond Paoella, Nina Carter, and William Roehl took part in the telephonic Compliance Hearing, with Mr. Roehl presiding. San Juan County (the "County") was represented by Amy S. Vira. Petitioner Friends of the San Juans (the "Friends") was represented by Kyle L. Loring. Although Common Sense Alliance and P.J. Taggares Company filed an objection, their counsel, Alexander W. Mackie, did not participate. Neither did San Juan Builders Association and William H. Wright participate, although Mr. Wright was on the telephone for the compliance hearing.

**I. BURDEN OF PROOF**

Following a finding of noncompliance, the jurisdiction is given a period of time to adopt legislation to achieve compliance.<sup>2</sup> After the period for compliance has expired, the Board is required to hold a hearing to determine whether the local jurisdiction has achieved

<sup>1</sup> San Juan County's Compliance Report in Response to the Board's August 20, 2014, Order, filed March 3, 2015.

<sup>2</sup> RCW 36.70A.300(3)(b).

1 compliance.<sup>3</sup> For purposes of Board review of the comprehensive plans and development  
2 regulations adopted by local governments in response to a noncompliance finding, the  
3 presumption of validity applies and the burden is on the challenger to establish the new  
4 adoption is clearly erroneous.<sup>4</sup>

5 In order to find San Juan County's action clearly erroneous, the Board must be "left  
6 with the firm and definite conviction that a mistake has been made."<sup>5</sup> Within the framework  
7 of state goals and requirements, the Board must grant deference to local governments in  
8 how they plan for growth:  
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10 The legislature intends that the board applies a more deferential standard of  
11 review to actions of counties and cities than the preponderance of the evidence  
12 standard provided for under existing law. . . Local comprehensive plans and  
13 development regulations require counties and cities to balance priorities and  
14 options for action in full consideration of local circumstances. The legislature  
15 finds that while this chapter requires local planning to take place within a  
16 framework of state goals and requirements, the ultimate burden and  
17 responsibility for planning, harmonizing the planning goals of this chapter, and  
18 implementing a county's or city's future rests with that community.<sup>6</sup>

## 19 II. DISCUSSION

20 The Final Decision and Order issued by the Board on September 6, 2013, remanded  
21 a number of issues to the County, directing it to take legislative action to comply with GMA  
22 requirements. Subsequently, following a compliance hearing, the Board issued its first  
23 compliance order on August 20, 2014.<sup>7</sup> That order found San Juan County had achieved  
24 compliance on all but the following issues:

25 (1) San Juan County's allowance of sleeved and water-tight sewer lines in wetlands  
26 fails to include the Best Available Science to protect the functions and values of  
27 Critical Areas, in violation of 36.70A.172, and fails to protect the functions and values  
28 of wetland ecosystems, in violation of RCW 36.70A.060(2), 36.70A.172(1), and RCW  
29 36.70A.030(5);

30 (2) San Juan County's allowance of utility lines in wetlands fails to include the Best  
31 Available Science to protect the functions and values of Critical Areas, in violation of

32 <sup>3</sup> RCW 36.70A.330(1) and (2).

<sup>4</sup> RCW 36.70A.320(1), (2) and (3).

<sup>5</sup> *Department of Ecology v. PUD 1*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

<sup>6</sup> RCW 36.70A.3201, in part.

<sup>7</sup> Order Finding Compliance and Continuing Noncompliance.

1 RCW 36.70A.172 and fails to protect the functions and values of wetland  
2 ecosystems, in violation of RCW 36.70A.060(2), 36.70A.172(1), and RCW  
3 36.70A.030(5).

4 Prior to the compliance hearing of April 7, 2015, the parties filed the following:

- 5 1. San Juan County's Index to Compliance Record, filed March 3, 2015;
- 6 2. San Juan County's Compliance Report in Response to the Board's August 20,  
7 2014, Order, filed March 3, 2015;
- 8 3. Continuing Objections to Finding of Compliance filed by Petitioners Common  
9 Sense Alliance and P.J. Taggares Company on March 16, 2015;
- 10 4. Petitioner Friends of the San Juans' Objections to Finding of Compliance for  
11 Ordinance 01-2015, filed March 17, 2015;
- 12 5. San Juan County's Response to Objections, filed March 27, 2015.

13 CSA/Taggares objected to a finding of compliance based solely on the fact there are  
14 appeals pending in the Superior Court and the Court of Appeals.<sup>8</sup> The Friends only  
15 objected to a finding of compliance in regards to the potential allowance of utility lines within  
16 wetlands. While San Juan County's legislative action taken to cure noncompliance is  
17 entitled to a presumption of validity, the County must still demonstrate it has addressed the  
18 areas of noncompliance notwithstanding the lack of objection by a petitioner.<sup>9</sup>  
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24 <sup>8</sup> San Juan County Superior Court, Cause No. 14-2-05155-8; Court of Appeals, Div. I, Cause No. 72235-2-I.  
25 In *Clark County v. W. Wash. Growth Mgmt. Hearings Bd.*, 161 Wn. App. 204, 227-228 (Wash. Ct. App. 2011),  
26 the Court observed: Wash. Rev. Code § 36.70A.330 arguably requires the Growth Management Hearings  
27 Board to review a county's progress toward achieving compliance and to enter an order removing its original  
28 findings of noncompliance despite any pending review by the court. After entering a finding of noncompliance  
29 and allowing the County time to come into compliance with the Growth Management Act, the board shall set a  
30 hearing for the purpose of determining whether the state agency, county, or city is in compliance with the  
31 requirements of this chapter. The board shall issue any order necessary to make adjustments to the  
32 compliance schedule and set additional hearings as provided in Wash. Rev. Code § 36.70A.330(5) of this  
section. Wash. Rev. Code § 36.70A.330(1)-(2). The court notes that this practice makes determining whether  
a Growth Board's order is final for purposes of appeal under Wash. R. App. P. 2.1(a)(1), as opposed to  
discretionary review under Rule 2.1(a)(2), problematic. In addition, to the extent that the ruling appealed is no  
longer the final ruling (in effect), an opinion from this court could turn out to be an advisory opinion in violation  
of case law.

<sup>9</sup> *Abenroth v. Skagit County*, Case No. 97-2-0060c coordinated with *Skagit County Growthwatch v. Skagit  
County*, Case No. 07-2-0002, Order on Reconsideration, at 4-6 (Jan 21, 2009).

1 **Sleeved and water-tight sewer lines in wetlands**

2 **Issue to Be Decided**

3 Whether the County has appropriately addressed the violations resulting from the  
4 failure to include the Best Available Science to protect the functions and values of  
5 Critical Areas and wetland ecosystems through the allowance of sleeved and water-  
6 tight sewer lines in wetlands?

7 The Board's August 20, 2014, Compliance Order found and concluded the County's  
8 allowance of sleeved and water-tight sewer lines within wetlands failed to protect the  
9 functions and values of wetland ecosystems in violation of RCW 36.70A.060(2) and RCW  
10 36.70A.172(1), and the County had failed to include Best Available Science to protect the  
11 functions and values of critical areas in violation of RCW 36.70A.172.

12 On compliance, the County's adoption of Ordinance No. 01-2015 amended SJCC  
13 18.30.150(D)(3) Table 3.5, by *prohibiting* the allowance of such sewer lines within  
14 wetlands.<sup>10</sup>

15 The Friends did not object to a finding of compliance in regards to this issue and  
16 acknowledged during the hearing compliance had been achieved.<sup>11</sup> The County's action  
17 directly addressed the Board's findings and conclusions in regards to these GMA violations.  
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20 **Utility lines in Wetlands**

21 **Issue to Be Decided**

22 Whether the County has appropriately addressed the violations resulting from the  
23 failure to include the Best Available Science to protect the functions and values of  
24 Critical Areas and wetland ecosystems through the allowance of utility lines in  
25 wetlands?

26 Similarly, in the Compliance Order, the Board found and concluded the allowance of  
27 utility lines within wetlands failed to include the Best Available Science to protect the  
28 functions and values of Critical Areas, in violation of RCW 36.70A.172 and failed to protect  
29 the functions and values of wetland ecosystems, in violation of RCW 36.70A.060(2), RCW  
30 36.70A.172(1), and RCW 36.70A.030(5). Given that failure to consider BAS, the Board  
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<sup>10</sup> Ordinance No. 01-2015, p. 20: SJCC 18.30.150(D)(3), Table 3.5(u)(ii).

<sup>11</sup> Transcript of Proceedings-Telephonic Compliance Hearing, p. 5, lines 11-14.

1 further found the County had failed to provide a rationale for departing from BAS in  
2 accordance with the requirements of RCW 36.70A.172(1), as interpreted by the Washington  
3 Supreme Court.<sup>12</sup> The Department of Commerce's BAS rules designed to assist  
4 jurisdictions with GMA compliance include WAC 365-195-915(1) which is set forth below  
5 with relevant portions underlined:

6 To demonstrate that the best available science has been included in the  
7 development of critical areas policies and regulations, counties and cities should  
8 address each of the following on the record:

9 (a) The specific policies and development regulations adopted to protect the  
10 functions and values of the critical areas at issue.

11 (b) The relevant sources of best available scientific information included in the  
12 decision-making.

13 (c) Any nonscientific information—including legal, social, cultural, economic, and  
14 political information—used as a basis for critical area policies and regulations  
15 that depart from recommendations derived from the best available science. A  
16 county or city departing from science-based recommendations should:

17 (i) Identify the information in the record that supports its decision to depart  
18 from science-based recommendations;

19 (ii) Explain its rationale for departing from science-based  
20 recommendations; and

21 (iii) Identify potential risks to the functions and values of the critical area or  
22 areas at issue and any additional measures chosen to limit such risks.

23 State Environmental Policy Act (SEPA) review often provides an  
24 opportunity to establish and publish the record of this assessment.

25 In the prior compliance order the Board also addressed mitigation, noting the County  
26 required “ . . . stormwater pollution prevention best management practices to address the  
27 short-term construction impacts but this does not address the long-term degradation of  
28 wetland functions and values . . . . ”<sup>13</sup>

29 <sup>12</sup> *Swinomish Indian Tribal Community v. WWGMHB*, 161 Wn.2d 415, 430-431, 158 P.3d 1179 (2007): In  
30 reaching this determination, we began by reviewing how the GMA instructs local governments to employ BAS.  
31 The legislature has expressly delegated to counties and cities the function of developing the specific means for  
32 protecting critical areas. See RCW 36.70A.3201. Under the GMA, counties and cities “have broad discretion in  
developing [development regulations] tailored to local circumstances”. Moreover, the GMA does not require  
the county to follow BAS; rather, it is required to “include” BAS in its record. RCW 36.70A.172(1). Thus, the  
county may depart from BAS if it provides a reasoned justification for such a departure. (citations omitted).  
In the Aug. 20, 2014 Order Finding Compliance and Continuing Non-Compliance, the Board found: “In light of  
this BAS in the record, the Board finds the County failed to substantively consider the BAS relating to, and the  
County did not provide any rationale or reasoning for, departing from this science.”, p. 54.

<sup>13</sup> Order Finding Compliance and Continuing Non-Compliance, August 20, 2014, p. 38.

1 The Board added:

2 The County must require compensatory mitigation if its development regulations  
3 allow harm to wetlands. Ordinance 2-2014 contains a circular, inconsistent  
4 provision allowing utility construction in wetlands if there are no adverse effects  
5 on the wetlands. But the science indicates construction activities in wetlands  
6 inherently degrade wetland functions and values. Science in the record shows  
7 there are long-term adverse impacts to wetlands functions and values (e.g.,  
8 water regime) caused by construction activities, soil disturbance, and the  
9 introduction of invasive species in wetlands. Science does not support the notion  
10 that all adverse impacts can be prevented through the County's existing  
11 mitigation plan provisions.

12 Thus, the County has not required adequate compensatory mitigation for long-  
13 term harm to wetlands from ground-disturbing utility line construction. The  
14 County has not protected the ecological functions and values of wetlands, as  
15 required by RCW 36.70A.172.<sup>14</sup>

16 The observations regarding departure from BAS and compensatory mitigation were  
17 summarized in the Board's Conclusion of Law No. 4 and Finding of Fact No. 3:

18 C/L No. 4. The County failed to provide a reasoned justification for departing  
19 from the Best Available Science.

20 F/F 3. The County's development regulations pertaining to utility lines do not  
21 require adequate compensatory mitigation for long-term harm to wetlands  
22 caused by construction activities, soil disturbance, altered water regimes, and the  
23 introduction of invasive species.

24 With the adoption of Ordinance No. 01-2015, the County amended SJCC  
25 18.30.110(C)(3)(a) to require compensatory mitigation in conformance with the  
26 requirements of SJCC 18.30.110(E).<sup>15</sup> The amended County Ordinance's Section 1, SJCC  
27 18.30.110.C.3.a, now reads as follows: (deleted language interlineated and added language  
28 underlined)

29 Installation, construction of electrical, telecommunications, cable, water, sewer,  
30 and other utility lines and equipment within existing structures, facilities,  
31 infrastructure systems, development areas, and uses, utility easements, and  
32 public and private rights-of-way, provided:

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<sup>14</sup> *Id.* pp. 54, 55.

<sup>15</sup> Ordinance No. 01-2015, page 7: SJCC 18.30.110(C)(3).

- 1 i. There is no further intrusion into geologically hazardous areas, frequently  
2 flooded areas, wetlands, or fish and wildlife habitat conservation areas or their  
3 buffers;  
4 ii. Soil erosion is controlled;  
5 iii. Disturbed areas are promptly stabilized; and  
6 iv. Actions do not have any additional adverse effect on the functions and  
values of critical areas. Any adverse impacts to critical areas are mitigated in  
accordance with SJCC18.30.110 (E).

7  
8 The Friends argue Ordinance No. 01-2015 establishes two separate exemptions from  
9 standard critical area regulations for utility development: one for construction in “previously  
10 developed areas” (SJCC 18.30.110.C.3.a) and one for “previously unspoiled critical areas”  
11 (SJCC 18.30.110.C.3.b).<sup>16</sup> The Petitioner contends the Ordinance only requires a County  
12 permit for development within public rights-of-way and excludes permitting for development  
13 outside public rights-of-way. The Friends state the County fails to explain why two distinct  
14 exemptions were established, one for “disturbed” and one for “undisturbed” critical areas. It  
15 stressed in both its brief and at oral argument, that the County’s standard critical area  
16 regulation exemption for utility lines lack “oversight of utility development in critical areas  
17 outside of public rights-of-way”. Such oversight, it argues, would ensure no net loss of  
18 critical area functions and values.

19  
20 Additionally, the Friends question the County’s BAS departure justifications.<sup>17</sup>

21 The County states the Friend’s arguments are essentially based on the alleged  
22 County “lack of oversight” of utility installations in critical areas. It observes that a “lack of  
23 oversight” was not an issue raised by the Board in its most recent order finding continuing  
24 noncompliance. During the April 7, 2015, compliance hearing it observed the GMA does  
25 not include a “mandate that everyone follow the law.” Rather, the County adopts the law,  
26 expects everyone to follow it, and for those that do not, it provides code enforcement,  
27 including civil and criminal penalties.

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29 The County states it complied with the Board’s compliance order by providing  
30 detailed information supporting its decision to depart from BAS, its rationale for that  
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<sup>16</sup> Petitioner Friends of the San Juans’ Objections to Finding of Compliance for Ordinance 01-2015, p. 3.

<sup>17</sup> *Id.*, pp. 6-7.

1 departure, the identification of potential risks, and the measures it has taken to limit those  
2 risks.<sup>18</sup> Finally, it states it specifically complied with the Board's order to include mitigation,  
3 by mandating compliance with SJCC 18.30.110(E), the County's mitigation sequencing  
4 requirements.

#### 6 **A. LACK OF OVERSIGHT**

7 The Friends weave a concern regarding what it describes as a "lack of [County]  
8 oversight" or a "lack of a mechanism for ensuring compliance" into its objections regarding  
9 BAS departure as well as mitigation.<sup>19</sup> The Board questions whether oversight is a question  
10 before it in these compliance proceedings. However, the Friends' suggestion that the  
11 Findings in Ordinance No. 01-2015 referring to the requirement to obtain a right-of-way  
12 permit for critical area work within public road rights-of-way<sup>20</sup> does not lead to a conclusion  
13 that other County permitting requirements are not applicable to construction outside of  
14 public rights-of-way.

15 Nor does the alleged lack of oversight constitute a flaw in the now included mitigation  
16 requirements in SJCC 18.30.110(C)(3)(a). The Critical Area Mitigation Requirements  
17 included in the Ordinance<sup>21</sup> are comprehensive, including the requirements for significant  
18 detail to be incorporated into required mitigation plans, combined with monitoring and  
19 adaptive management.<sup>22</sup>

20 Moreover, San Juan County stated at the Compliance Hearing that the County  
21 interprets its own ordinance as requiring the preparation of a mitigation plan for construction  
22 projects within critical areas whether inside or outside of public rights-of-way. San Juan  
23 County Deputy Prosecuting Attorney Amy Vira answered Board questions about critical area  
24 mitigation plan requirements, responding in pertinent part as follows:

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29 <sup>18</sup> SJC Response to Objections, p 3.

30 <sup>19</sup> Petitioner Friends of the San Juans' Objections to Finding of Compliance for Ordinance 01-2015, pp. 1, 3, 4,  
31 7, and 8.

32 <sup>20</sup> Ordinance No. 01-2015, Finding J. II.4.iii, p. 5.

<sup>21</sup> *Id.*, SJCC Sec. 18.30.110(E), pp.10-12.

<sup>22</sup> The County might consider including a requirement for any activity exempt from standard critical area regulations to apply for and obtain an exemption certificate prior to undertaking development activity within a critical area or its buffers. Such a requirement would more fully address the Friends' concerns regarding oversight.



1 Board Member Paoella: And is it going to be a standard feature of any new work  
2 that there will be a mitigation plan prepared first?<sup>23</sup>

3 Ms. Vira: If you had a situation where no other permits were required, then you  
4 would come, look here, meet all of these requirements, and then go to  
5 18.30.110(E), which is on page 10 of the ordinance. . . . And then, how are you  
6 going to mitigate it? And you would work with the planning department to  
7 develop a plan that would meet these requirements.<sup>24</sup>

8 Board Member Paoella: Okay. And that sounds like it will be a routine feature  
9 from here on out to have the mitigation plan?

10 Ms. Vira: Correct.<sup>25</sup>

11 Board Member Paoella: Okay. So the citizens can expect that - - and the county  
12 will expect that whenever there is such work proposed, that it would be a routine  
13 feature that they would do a mitigation plan first to make sure that there is no net  
14 loss of ecological function?

15 Ms. Vira: Yes.<sup>26</sup>

16 Board Member Paoella: If somebody comes into the planning department in San  
17 Juan County and says, "I am going to be constructing a - - doing construction in a  
18 wetland," is the consistent policy going to be to prepare a mitigation plan? That's  
19 my question.

20 Ms. Vira: Yes.<sup>27</sup>

## 21 **B. DEPARTURE FROM BAS**

22 The County acknowledges SJCC18.30.110(C)(3)(a) constitutes a departure from  
23 BAS.<sup>28</sup> The question is whether the County has now provided a reasoned justification for  
24 departing from BAS.<sup>29</sup> (Finding of Fact 4, Order Finding Compliance and Continuing Non-  
25 Compliance). WAC 365-195-915 provides such a departure should include: (1) information  
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28 <sup>23</sup> Transcript of Proceedings-Telephonic Compliance Hearing, p. 27, lines 24-25, p. 28, line 1.

29 <sup>24</sup> *Id.*, p. 28, lines 23-25, p. 29, lines 1 and 7-9.

30 <sup>25</sup> *Id.*, p. 31, lines 8-11.

31 <sup>26</sup> *Id.*, p. 30, lines 15-21.

32 <sup>27</sup> *Id.*, p. 44, lines 9-14.

<sup>28</sup> Ordinance No. 01-2015, p. 2.

<sup>29</sup> "Thus, a county may depart from BAS if it provides a reasoned justification for such a departure." *Swinomish Indian Tribal Cmty.*, 161 Wn.2d at 431-32. "What constitutes a sufficiently reasoned process for departing from BAS is poorly defined in GMA jurisprudence. But 'reasoned' means rational and supported by evidence." *Ferry County v. Growth Mgmt. Hr'gs Bd.*, 184 Wn. App. 685, 740 (Wash. Ct. App. 2014).

1 in the record that supports the decision; (2) an explanation of the rationale for BAS  
2 departure; (3) a description of the potential risks to the functions and values of critical areas,  
3 and; (4) identification of the measures limiting such risks.

4 The County's Ordinance No. 01-2015, pages 2 through 6, addressed the WAC 365-  
5 195-915 criteria relating to BAS under the particular facts and circumstances in San Juan  
6 County.

7  
8 The Friends has failed to meet its burden of proof to establish a GMA violation  
9 related to the County's BAS departure justification.

### 10 11 **C. MITIGATION**

12 It was clear from the record that there are significant risks when utility lines are  
13 allowed to be constructed/installed within wetlands. As the Board stated in its Final  
14 Decision and Order:

15 BAS in the record indicates that any land use that results in the creation of  
16 impervious areas, clearing of vegetation, or compaction of soils will be  
17 incompatible with critical area functions. Typically, critical area buffers need to  
18 be densely vegetated with appropriate native vegetation to perform water quality  
19 and habitat-related functions. In most cases, this requirement precludes any  
20 human uses of the buffer. BAS also states that wetland functions are lost or  
21 reduced when a utility right-of-way converts a forested wetland to an emergent or  
22 shrub wetland. A utility corridor with a maintenance road has higher impacts to a  
wetland than without a maintenance road.<sup>30</sup> (Citations to the record omitted)

23 The Board's previous compliance order found the "County's development regulations  
24 pertaining to utility lines do not require adequate compensatory mitigation for long-term  
25 harm to wetlands caused by construction activities, soil disturbance, altered water regimes,  
26 and the introduction of invasive species".

27 "Mitigation" and "mitigation sequencing" are not always clearly understood. Those  
28 terms are easily confused with "compensatory mitigation". The latter is the step in the  
29 mitigation sequence that occurs after avoidance and minimization. It involves restoring (re-  
30 establishing, rehabilitating), creating (establishing), enhancing, or preserving wetlands to  
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<sup>30</sup> FDO, September 6, 2014, p. 71; see also Order Finding Compliance and Continuing Non-Compliance, August 20, 2014, p. 30.

1 replace those lost or degraded through permitted activities.<sup>31</sup> "Mitigation" and "mitigation  
2 sequencing" have a broader meaning: they include as the first option, avoidance of any  
3 impact. If avoidance is not possible, the second step in mitigation sequencing is  
4 minimization. Only after those first steps does one then consider compensatory mitigation.  
5 San Juan County's mitigation sequencing steps are set forth in SJCC 18.30.110(E)(8)(d)  
6 and essentially mirror the Department of Ecology's WAC 197-11-768, which provides:

8 "Mitigation" means:

- 9 (1) Avoiding the impact altogether by not taking a certain action or parts of an  
10 action;  
11 (2) Minimizing impacts by limiting the degree or magnitude of the action and its  
12 implementation, by using appropriate technology, or by taking affirmative steps to  
13 avoid or reduce impacts;  
14 (3) Rectifying the impact by repairing, rehabilitating, or restoring the affected  
15 environment;  
16 (4) Reducing or eliminating the impact over time by preservation and  
17 maintenance operations during the life of the action;  
18 (5) Compensating for the impact by replacing, enhancing, or providing substitute  
19 resources or environments; and/or  
20 (6) Monitoring the impact and taking appropriate corrective measures.

21 On compliance, the County deleted the "circular, inconsistent provision allowing utility  
22 construction in wetlands if there are no adverse effects on the wetlands"<sup>32</sup> and added the  
23 requirement that the critical area exemption regulation for the construction of utility lines in  
24 "disturbed" critical areas (SJCC18.30.110(C)(3)(a)) include mitigation pursuant to SJCC  
25 18.30.110(E). The amendment mirrors the requirement for such actions in "undisturbed"  
26 areas (SJCC18.30.110(C)(3)(b)). The Ordinance now includes appropriate compensatory  
27 mitigation, the lack of which was one of the bases for the Board's finding of continuing non-  
28 compliance in the August 20, 2014, Order Finding Compliance and Continuing  
29 Noncompliance.

31 <sup>31</sup> Washington State Department of Ecology, U.S. Army Corps of Engineers Seattle District, and U.S.  
32 Environmental Protection Agency Region 10. March 2006. Wetland Mitigation in Washington State – Part 1:  
Agency Policies and Guidance (Version 1). Washington State Department of Ecology Publication #06-06-  
011a. Olympia, WA. p. ix.

<sup>32</sup> Order Finding Compliance and Continuing Non-Compliance, August 20, 2014, p. 54.

1 The Friends has failed to meet its burden of proof to establish a GMA violation  
2 related to mitigation.

3  
4 **III. ORDER**

5 The Board finds San Juan County has achieved compliance with RCW 36.70A.172,  
6 RCW 36.70A.060(2), RCW 36.70A.172(1), and RCW 36.70A.030(5) in regards to its  
7 allowance of exemptions from its standard critical areas regulations, in regards to sleeved  
8 and water-tight sewer lines, and utility lines in wetlands.  
9

10 This case is closed.

11  
12 ENTERED this 14th day of May, 2015.

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16 William Roehl, Board Member

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19 Nina Carter, Board Member

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22 Raymond Paoella, Board Member

23 **Note: This is a final decision and order of the Growth Management Hearings Board**  
24 **issued pursuant to RCW 36.70A.300.<sup>33</sup>**

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32 <sup>33</sup> A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days as provided in RCW 34.05.514 or 36.01.050. See RCW 36.70A.300(5) and WAC 242-03-970. It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth Management Hearings Board is not authorized to provide legal advice.